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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai*

Summary

The present thematic report is submitted to the Human Rights Council pursuant to Council resolutions 15/21 and 24/5.

In sections I and II of the report, the Special Rapporteur provides an overview of the activities he carried out between 1 March 2013 and 28 February 2014. In section III, he assesses the threats to the rights to freedom of peaceful assembly and of association for groups most at risk.

The Special Rapporteur outlines his conclusions and recommendations in section IV.

* Late submission.

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I. Introduction

1. The present annual report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association is submitted to the Human Rights Council pursuant to Council resolutions 15/21 and 24/5. It covers the activities the mandate holder carried out between 1 March 2013 and 28 February 2014 and addresses legislation and practices that discriminate against certain groups and deprive them of their rights to freely associate and peacefully assemble. Recommendations to various stakeholders are made, with a view to better promoting and protecting the rights to freedom of peaceful assembly and of association.

2. To prepare the present report, the Special Rapporteur convened a one-day expert meeting in Geneva, Switzerland, on 9 December 2013. Moreover, he benefited from consultations held in Asia (Singapore) and Latin America (El Salvador) on the topic and from submissions by various individuals and groups. In accordance with Human Rights Council resolution 15/21, he also took into account relevant elements of work available within the Council.[1]

II. Activities

A. Communications

3. The Special Rapporteur sent a total of 207 communications between 1 March 2013 and 28 February 2014. His observations on communications addressed to States and on the replies received between 1 March 2013 and 28 February 2014 are enclosed in an addendum to the present report (A/HRC/26/29/Add.1).

B. Country visits

4. The Special Rapporteur visited Rwanda from 20 to 27 January 2014. He thanks the Government of Rwanda for its exemplary cooperation on that visit. Furthermore, he is grateful to the Governments of Kazakhstan, Malawi and Oman for extending invitations, which he hopes to honour soon. During the reporting period, the Special Rapporteur renewed 32 pending country requests. He also made additional requests to Angola, Bangladesh, Canada, Kenya, Nigeria, Saudi Arabia, Viet Nam and Zambia.[2]

C. Participation in various events

5. From 1 March 2013 to 28 February 2014, the Special Rapporteur took part in the following events organized by States and intergovernmental institutions, including international and regional human rights mechanisms:

- Seventh Ministerial Conference of the Community of Democracies, hosted by the Government of Mongolia (Ulaanbaatar, 27–29 April 2013);

[1] Country situations mentioned in the present report have been subject to communications transmitted to Governments, as well as to press releases issued by mandate holders and high-level United Nations officials.

[2] See www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/CountryVisits.aspx.

- Human Rights Council seminar on effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protests, organized by the Office of the United Nations High Commissioner for Human Rights (Geneva, 2 December 2013);
- Launch of the "Protecting civic space and the right to access resources" project, organized by the Community of Democracies and hosted by the Ministry of Foreign Affairs of Sweden (Stockholm, 24 and 25 February 2014).

6. Furthermore, in the above-mentioned period, the Special Rapporteur participated in the following events organized by civil society:

- Conference on "Defenders' days – empowering human rights defenders at risk", organized by Civil Rights Defenders (Stockholm, 2–5 April 2013);
- Course on "International systems of human rights protection", organized by the Human Rights Centre of the Andrés Bello Catholic University (remote participation, Caracas, 18 September 2013);
- Expert meeting on the "Promotion and protection of human rights in assemblies and protests", organized by the Geneva Academy of International Humanitarian Law and Human Rights (Pretoria, 3 and 4 October 2013);
- Seventh Front Line Defenders Platform for Human Rights Defenders at Risk, organized by Front Line Defenders (Dublin, 9–11 October 2013);
- Public lectures at McGill and Ottawa universities, and meetings with civil society and State officials (Montreal and Ottawa, 22–25 October 2013);
- Regional consultation on "The space for civil society: how can we protect and expand an enabling environment?", organized by ACT Alliance and DanChurchAid (Blantyre, 25 and 26 November 2013);
- Human Rights Summit, organized by Human Rights First (Washington, D.C., 4 December 2013);
- Academic visit to Cambodia, organized by the Asian Forum for Human Rights and Development (Phnom Penh, 5 and 6 February 2014).

III. Threats to the rights to freedom of peaceful assembly and of association for groups most at risk

A. Definitions

7. Backlash from the Arab Spring of early 2011 continues to be felt globally, with increasingly less space in which civil society actors can promote or defend collectively a field of mutual interest. Democracy involves more than just exercising the right to vote. For democracy to flourish, people must be guaranteed the whole range of fundamental rights and freedoms, including the rights to freedom of expression and of assembly, as a means to influence the public policies of the State. In recent years many States have responded to people's assertions of peaceful dissent by violently clamping down on peaceful protests and other forms of assembly, unduly restricting the ability of associations to form and operate, and physically assaulting civil society actors.

8. While those actions have negatively affected all those who choose to exercise their rights to peacefully assemble and freely associate, certain groups are at particular risk of having their space all but vanish. In the present report, the Special Rapporteur focuses on

the challenges facing the various groups that are often relegated to the margins of society, both in their daily lives and in the exercise of their rights to freedom of peaceful assembly and of association. He hopes to cast the spotlight on the ways in which the denial of the rights to freedom of peaceful assembly and of association leads to the marginalization of those groups and how marginalization exacerbates their inability to effectively exercise their rights.

9. The Special Rapporteur is mindful that the State is not the only perpetrator of violations relating to peaceful assembly and association. The actions of non-State actors play a significant role in denying groups most at risk the space to exercise their rights, often through prevailing patriarchal attitudes, stereotypes, assumptions and social constructions that keep those groups at the margins of society. In that respect, the Special Rapporteur also recalls that the obligations of States extend beyond respecting and fulfilling rights, to protecting rights holders from violations and abuses by others.

10. As a starting point, the Special Rapporteur acknowledges that groups most at risk share the experience of discrimination, unequal treatment and harassment. He describes those groups based on their level of marginalization in the exercise of the rights to freedom of peaceful assembly and of association. Some of the groups that are considered in the present report to be most at risk are persons with disabilities; youth, including children; women; lesbian, gay, bisexual, transgender and intersex (LGBTI) people; members of minority groups; indigenous peoples; internally displaced persons; and non-nationals, including refugees, asylum seekers and migrant workers.

11. For the purposes of the report, the groups most at risk will also include groups and individuals who are targeted not because of their identity, but because they actively lobby for the rights of those most at risk of discrimination and retribution. Human rights defenders, including journalists, trade unionists and environmental activists, among others, face considerable opposition, harassment, stigmatization and even physical attacks from State and non-State actors in many countries.

12. The term "marginalized" is adopted in the present report to describe those groups, rather than the term "vulnerable", which the Special Rapporteur considers as depicting members of such groups as helpless and passive victims of the conditions in which they find themselves. In his view, the conditions and situations that create marginalization are maintained by deliberate acts or omissions by both State and non-State actors to the continued detriment of such groups. Regardless of the causes, the improvement of the circumstances is primarily the responsibility of the State. In other words, marginalization, rather than vulnerability, more accurately captures the societal attitudes and assumptions that shape the lives of those affected by these conditions.

13. These groups should not be viewed as monolithic or discrete. Individuals can legitimately claim multiple identities, such as being a woman and a person with disability, a member of a minority group and stateless. The combinations are numerous. All these individuals can experience marginalization at multiple levels and in different ways within those categories. Often the multiple dimensions of marginalization go unrecognized and unaddressed. In order to understand the impact of discrimination on marginalized groups, it is important to recognize the different life experiences of the groups and individuals within the groups. In the present report, as far as possible, the nuances across all of the groups most at risk are taken into account.

14. The Special Rapporteur notes with deep concern the innumerable examples of violation and abuse of the rights to freedom of peaceful assembly and of association affecting groups most at risk. It will not be possible within the scope of this report to identify all of them and the ways in which such groups are specifically affected. Instead, the

Special Rapporteur will present patterns of violations and abuses with a view to articulating standards that guide practice while providing a few illustrative examples.

15. In general, restrictions on and exclusions from the exercise of the rights to freedom of peaceful assembly and of association have the consequence of reinforcing marginalization. The inverse is also true and more compelling: marginalization often means that individuals and groups are unable to effectively exercise their rights to freedom of peaceful assembly and of association. That interrelation is evident in the illustrative examples discussed in the following sections. The ability to exercise the rights to freedom of peaceful assembly and of association constitutes a key component in the empowerment of marginalized communities and individuals.

B. International human rights law

16. The rights to freedom of peaceful assembly and of association are guaranteed to everyone without distinction. Article 26 of the International Covenant on Civil and Political Rights guarantees to all individuals equal and effective protection against discrimination on the grounds identified in article 2. Numerous international and regional human rights instruments contain prohibitions of discrimination both generally and in relation to specific groups.

17. The Human Rights Committee understands "discrimination" to imply "any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms".[3] The Committee has established that sexual orientation and gender identity also constitute prohibited grounds for discrimination under article 2 of the Covenant.[4] Discrimination results from legislation and practices that explicitly exclude or target groups or individuals in those groups.

18. Various international law instruments point to particular principles and measures that States should adopt in order to achieve non-discrimination and equality. For example, States should:

- Ensure that in all actions concerning children in all spheres, the best interests of the child are a primary consideration;[5]
- Eliminate gender-based violence, affirm women's right to reproductive choice and modify social or cultural patterns so as to eliminate the idea of stereotyped roles for men and women;[6]
- Protect people from homophobic and transphobic violence, prevent torture and cruel, inhuman and degrading treatment on the grounds of sexual orientation and gender identity and also prohibit discrimination on those grounds, repeal laws criminalizing homosexuality, safeguard the freedoms of expression, association and peaceful assembly for LGBTI people and recognize the rights of LGBTI people to

[3] General comment No. 18 (1989), para. 7.

[4] See, inter alia, communication No. 488/1992, *Toonen* v. *Australia*, Views adopted on 31 March 1994; concluding observations on Kuwait (CCPR/C/KWT/CO/2).

[5] Convention on the Rights of the Child, art. 3, para. 1.

[6] Convention on the Elimination of All Forms of Discrimination against Women, arts. 2 (f), 5 and 16 (e); Committee on the Elimination of Discrimination against Women, general recommendation No. 19 on violence against women, para. 24.

enjoy or exercise, on an equal basis with others, all human rights and fundamental freedoms (A/HRC/19/41);

- Provide reasonable accommodation of and support to persons with disabilities to ensure that they enjoy or exercise, on an equal basis with others, all human rights and fundamental freedoms;[7]
- Combat prejudice, eliminate discrimination and promote tolerance, understanding and good relations among indigenous peoples and all other segments of society;[8]
- Take measures to protect and promote the rights of minorities and their identity and take positive action to help minority cultures flourish;[9]
- Prohibit the collective expulsion of migrant workers and members of their families and prohibit discriminatory legislation, in particular concerning remuneration, conditions of work and terms of employment;[10]
- Contribute to the national, economic and social development processes of internally displaced people.[11]

19. The Special Rapporteur notes that, in general, State obligations to achieve non-discrimination and equality are immediate and not subject to progressive realization.

20. International human rights instruments that protect the rights of particular groups specifically recognize directly or indirectly the rights to freedom of peaceful assembly and of association for those groups:

- The Convention on the Rights of the Child requires States parties recognizes the rights of the child to freedom of association and to freedom of peaceful assembly (art. 15).
- The Convention on the Elimination of All Forms of Discrimination against Women requires States to take all appropriate measures to ensure that women are able to participate in the political and public life of the country on equal terms with men. That includes the right to participate in non-governmental organizations (NGOs) and associations concerned with the public and political life of the country (art. 7).
- The obligation of States to safeguard the human rights of LGBTI people is well established in international human rights law on the basis of the Universal Declaration of Human Rights, which, in article 1, unequivocally reads: "All human beings are born free and equal in dignity and rights." Moreover, it is enshrined in the jurisprudence and interpretation of State obligations arising from international human rights law by numerous United Nations human rights treaty bodies.[12] In its resolution 17/19, the Human Rights Council expressed concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.

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[7] Convention on the Rights of Persons with Disabilities, art. 4, para. 1.

[8] United Nations Declaration on the Rights of Indigenous Peoples, art. 15.

[9] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, arts. 1 and 4.

[10] International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 22 and 25.

[11] General Assembly resolution 68/180.

[12] See, for example, the Human Rights Committee, *Toonen* v. *Australia* (Views) and CCPR/C/KWT/CO/2; the Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009); the Committee on the Rights of the Child, general comments No. 3 (2003), No. 4 (2003) and No. 13 (2011); and the Committee against Torture, general comment No. 2 (2007).

- Article 5 of the Convention on the Rights of Persons with Disabilities is of particular importance in ensuring that persons with disabilities are treated as equal before and under the law. Article 29 explicitly recognizes the rights of persons with disabilities to participate in political and public life, including by participating in NGOs concerned with public and political life and by forming and joining organizations to represent the interests of persons with disabilities at all levels.

- Indigenous peoples are entitled, inter alia, to the right to participate fully in the political, economic, social and cultural life of the State, and to determine their own identity or membership in accordance with their customs and traditions.[13]

- The right of minority groups to freely associate is implied in the protection of the International Covenant on Civil and Political Rights of their right, in community with other members of their group, to enjoy their own culture, practice their religion and use their own language (art. 27).

- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families guarantees the right to join associations and take part in the activities of associations, but stops short of protecting the right to form associations (art. 26).

- Internally displaced persons have the same rights and freedoms under international and domestic law as other persons in the country and, in particular, have the right to associate freely and participate equally in community affairs.[14]

- Refugees lawfully staying in a country are entitled, in relation to the right to freedom of association, to the most favourable treatment accorded to nationals of a foreign country, in the same circumstances.[15]

- In relation to non-nationals, the Committee on the Elimination of Racial Discrimination recognizes that States may require non-citizens to have work permits in order to be eligible for job offers. However, all individuals are entitled to the enjoyment of labour and employment rights, including the freedom of assembly and association, once an employment relationship has been initiated until it is terminated.[16]

- The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms explicitly recognizes the rights of human rights defenders to peacefully assemble, to form, join and participate in non-governmental organizations, associations or groups and to communicate with non-governmental and intergovernmental organizations (art. 5). In its resolution 22/6, the Human Rights Council recognized the importance of the rights to freedom of peaceful assembly and of association for defenders.

21. As the Special Rapporteur has pointed out in previous reports, freedom should be the rule and restrictions the exception (A/HRC/23/39, para. 18). Any restrictions imposed must be strictly motivated by the limited concerns which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and

[13] United Nations Declaration on the Rights of Indigenous Peoples, arts. 5 and 33.
[14] Guiding Principles on Internal Displacement, principles 1, para. 1 and 22, para. 1 (c).
[15] Convention relating to the Status of Refugees, art. 15.
[16] General recommendation No. 30 (2004), para. 35.

freedoms of others.[17] Of utmost importance, as stated by the Human Rights Committee, is that where such restrictions are made, States must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights.[18]

C. Challenges to the enjoyment of the right to freedom of peaceful assembly by groups most at risk

1. Legislation governing freedom of peaceful assembly that contains explicitly discriminatory provisions

22. Article 21 of the International Covenant on Civil and Political Rights recognizes that the right to freedom of peaceful assembly should be enjoyed by everyone, as provided for by article 2 of the Covenant and resolutions 15/21, 21/16 and 24/5 of the Human Rights Council. Importantly, in its resolution 24/5, the Council reminded States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote those rights. Despite this, some Member States have laws that contain explicitly discriminatory provisions prohibiting assemblies by certain groups.

23. In Malaysia, for example, the Peaceful Assembly Act 2012 prohibits people under the age of 21 from organizing a public demonstration. Children under the age of 15 cannot even participate. Migrants and non-citizens may also face undue restrictions on their assembly rights. The same Act explicitly divests non-citizens of their right to organize or participate in a peaceful assembly. Article 33 of the Constitution of Mexico states that foreigners "may not in any way participate in the political affairs of the country", a provision that can be interpreted as prohibiting the rights of non-citizens to engage in peaceful assemblies. Similarly, article 354 of the Constitution of Myanmar extends the right of assembly only to citizens.

24. In the case of youth, including children, the Special Rapporteur acknowledges that there may be safety concerns when young people participate in some public demonstrations. However, he believes that laws such as that of Malaysia are not tailored narrowly enough to specifically address that concern. Rather, a blanket ban on individuals of a certain age eliminates the right to participate in peaceful public assemblies for an entire portion of the population, without exception, contrary to article 15 of the Convention on the Rights of the Child.

25. In the case of non-citizens and migrants, the Special Rapporteur notes that international law does allow for some citizenship-related limitations on certain political rights, such as voting rights and the ability to hold political office. It is however precisely for that reason that States should ensure that migrants are not stripped of other fundamental rights, particularly assembly rights. An individual's lack of citizenship or legal status does not mean that she or he should have no voice whatsoever in the political, economic or social affairs of her or his country of residence. In a sense, groups that are disenfranchised from mainstream political activities, such as voting and holding office, have an even greater need for alternative means to participate in the public sphere. Peaceful assemblies are an important tool for allowing the voices of otherwise excluded groups to be heard.

[17] International Covenant on Civil and Political Rights, arts. 21 and 22, para. 2.

[18] General comment No. 31 (2004), para. 6.

26. The Special Rapporteur also notes that the failure to provide any outlet for politically excluded groups to air their grievances can be counterproductive and carry severe consequences. Further, such restrictions can foster or magnify a culture of silence among the excluded group, putting them at higher risk of violations and abuses that may go unreported, uninvestigated and unpunished.

27. In addition, sexual orientation and gender identity are increasingly used as a basis for explicit discrimination in the area of assembly rights. In Ukraine, a draft law "on propaganda of homosexuality", which prohibits "propaganda of homosexual relations" aimed at children, was recommended in 2013 for the consideration of the parliament. This draft law defines "propaganda" as any public action to spread information on same-sex relations, including peaceful assemblies and educational courses. In August 2012, a Russian court upheld a Moscow city council ban on gay pride parades, prohibiting such assemblies for the next 100 years. In early 2014, the President of Nigeria signed the Same Sex Marriage (Prohibition) Act, which bans gay marriage and also makes it an offence to register, operate, participate in or support gay clubs, societies, organizations, processions or meetings, or to make a public display of a same-sex amorous relationship, directly or indirectly. An offence is punishable by a prison term of 10 years. The provision effectively bans any public or private meeting on the subject of sexual orientation and gender identity. In Uganda, the President signed a new anti-homosexuality bill into law in February 2014. This law imposes a sentence of life imprisonment for homosexuality and same-sex marriage and five to seven years of imprisonment for the "promotion" of homosexuality, which directly targets and threatens the work of LGBTI organizations and human rights defenders. In Kuwait, the new criminal offence of "imitating the opposite sex" directly targets and criminalizes transgender people and anyone seen as not conforming to gender norms. It has resulted in harassment, arbitrary arrest and detention, abuse, torture and sexual assault of transgender people. Expressing its concern, the Human Rights Committee has recommended that the offence be repealed (CCPR/C/KWT/CO/2, para. 30).

28. Such provisions are in clear violation of international human rights law. In that regard, the Human Rights Committee stated that "the reference to 'sex' in articles 2, paragraph 1, and 26 [of the International Covenant on Civil and Political Rights] is to be taken as including sexual orientation".[19] Since then, in numerous concluding observations, the Committee has urged State parties to guarantee equal rights to all individuals, as established in the Covenant, regardless of their sexual orientation or gender identity.

2. General legal provisions on freedom of peaceful assembly that have a disproportionately negative impact on certain groups

29. In some circumstances, general laws governing assemblies may have a disproportionate impact on certain groups who exercise or seek to exercise their assembly rights. Those restrictions appear to be neutral on their face, but in practice, they may have a harsh impact on the assembly rights of certain groups most at risk. They may also be drafted to appear neutral, but in practice are applied only against certain groups.

30. Some of the most prominent examples include "public morality" laws that have been used selectively against those promoting LGBTI rights. In June 2013, the President of the Russian Federation signed legislation banning "propaganda of non-traditional sexual relations" among minors. There is no legal definition in the Russian law of what constitutes non-traditional sexual relations, but it is widely acknowledged to be code for homosexual relations. While legislators have argued that the main purpose of the law is to protect children, the Committee on the Rights of the Child expressed concern at the law and

[19] *Toonen* v. *Australia*, para. 8.7.

recommended its repeal, as it found that it encouraged the stigmatization and discrimination of LGBTI children and the targeting and persecution of the LGBTI community (CRC/C/RUS/CO/4-5, para. 25).

31. The Special Rapporteur strongly condemns the recent wave of laws, regulations and practices in some parts of the world designed to silence, intimidate and harass those who promote the human rights of LGBTI people through public assemblies. The aforementioned law in the Russian Federation makes "propaganda of non-traditional sexual relations", which includes gay pride events or any assembly supporting LGBTI rights, punishable by administrative fines of up to 5,000 roubles for citizens and up to 100,000 roubles for foreigners and subjects the latter to deportation. Public assemblies are at the heart of an active civil society and a functioning democracy. Tolerance of others, pluralism and broadmindedness must be harnessed. As stated previously, it is not necessary to agree with what people do, but as long as it is done peacefully, and does not incite violence and hatred, it should be allowed.[20]

32. Numerous jurisdictions have in recent years banned peaceful protesters from covering their faces during demonstrations, motivated by fears that demonstrators who wear masks or hoods could engage in violence and escape punishment due to their concealed identities. Besides the fact that violent acts during peaceful demonstrations are already illegal under the laws of virtually every jurisdiction, the Special Rapporteur is concerned that bans on face coverings during assemblies are in some circumstances used to target particular groups and improperly curtail their right to freedom of peaceful assembly.

33. There may be legitimate and non-criminal reasons for wearing a mask or face covering during a demonstration, including fear of retribution. For example, in Egypt, article 6 of the 2013 law on protests and demonstrations prohibits the wearing of a mask to hide the face during any assembly. That provision contains no exceptions and could be used to discriminate against women who wear the niqab, effectively preventing them from participating in public meetings or protests. Such laws may also be used against individuals with medical disabilities who wear face masks for medical purposes. Certain peaceful protest movements in the Arab world, Western Europe, North America and elsewhere have adopted the use of the Guy Fawkes mask as an emblem. The mask is particularly popular among youth and student protest movements. The donning of this mask can be as much a political statement — a way of identifying with one's fellow demonstrators and a worldwide movement — as it is an attempt to conceal identity.

34. Individuals with disabilities frequently face difficulty in staging peaceful assemblies due to limitations related to their disabilities. Those obstacles include the inability to gain access to the forms and notification procedures (for example, due to a lack of regulations or forms in Braille or other accessible formats) and to Government offices where a notification of assembly may be lodged. In that respect, the Special Rapporteur urges States to strive for implementation of article 19 of the Convention on the Rights of Persons with Disabilities, which called for States to recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and to take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of that right and their full inclusion and participation in the community. Similarly, a lack of multilingual forms may also pose an obstacle to indigenous and minority groups and any other individuals or groups not fluent in the primary language of the local jurisdiction.

35. Moreover, the assemblies of religious, ethnic and cultural minorities have been selectively targeted. In Rakhine State, Myanmar, for example, Emergency Act 144 was

[20] See, for example A/HRC/19/40, para. 17.

applied in June 2012 to prevent groups of five or more people from gathering in public areas. The Act was imposed following severe riots between Rohingya Muslims, a predominantly stateless ethnic group in western Rakhine State, and Buddhists in the area. The ban on public gatherings, however, has reportedly only been enforced against Rohingya. The ban has been extended numerous times, and was still in effect at the time of the drafting of the present report. The ban has also prevented Rohingya from gathering in local mosques to pray and celebrate religious festivals; Buddhists religious gatherings have reportedly not been disrupted.

3. Other legal provisions that have a disproportionate impact on the right to freedom of assembly of some groups

36. In some States, laws of general application may have a disproportionate impact on the assembly rights of certain groups, whether intentionally or inadvertently. For example, laws governing the prevention and combating of offences linked to information and communications technology have the potential to be applied in ways that hinder the organization of peaceful assemblies. Youth, being the largest demographic of social media users, are particularly affected by restrictive Internet access policies. The Special Rapporteur warns that restrictions to information and communications technologies should be applied exceptionally. The general norm should be to permit the open and free use of the Internet and other forms of communications (A/HRC/23/39, para. 76).

37. The Special Rapporteur has found that citizenship and residency status frequently affect assembly rights, often by design. As noted above, a number of States, including Singapore, Malaysia and Myanmar, formally deny the right to freedom of peaceful assembly to non-citizens. The Special Rapporteur finds no basis in international law for completely divesting non-citizens of their assembly rights. The right to freedom of peaceful assembly is particularly important for non-citizens and migrants, who may lack other mechanisms with which to advance their political, social and economic interests.

38. The Special Rapporteur also notes with concern that citizenship laws are, by their nature, frequently politicized and often drafted by dominant groups and thus provide an inherently problematic basis for denying the assembly rights of non-dominant groups. One of the more disturbing cases that the Special Rapporteur has examined is the situation of some 700,000 members of the Rohingya minority in Myanmar. The origins of the Rohingya people are controversial; some historians claim that the group dates back centuries, while others claim that the group largely comprises descendants of migrants who arrived during the British colonial period. Yet under Myanmar law, Rohingya are considered "non-nationals" and do not have citizenship rights. By extension, they have no right to peaceful public assembly under domestic law.

39. Problems can arise even in States where the assembly rights of non-citizens are protected by law. The Special Rapporteur has received reports that in Cyprus, for example, some private employment contracts prohibit migrants from engaging in political activity, effectively depriving that group of their right to peacefully assemble (and freely associate). Although provisions contained in private employment contracts do not represent direct restrictions from the State, the State does have an important and pivotal role in prohibiting such restrictions, that is, by rejecting such restrictions as valid contractual terms under domestic law. The Special Rapporteur recalls that Member States have a responsibility to facilitate and protect the right to freedom of peaceful assembly. States should closely examine their role in supporting, even if inadvertently, private restrictions on that right. State mechanisms and institutions must not be used to enable private actors to abrogate fundamental rights.

40. Persons with disabilities may be excluded from organizing and participating in assemblies, for example, due to laws and policies that fail to provide reasonable

accommodation for their specific needs. Physical barriers, such as a lack of access to public buildings and amenities such as transportation, distances that must be travelled to gather at officially sanctioned protest sites, and a lack of accommodation for facilitated communication, including in the online environment, may hinder the participation of persons with disabilities in peaceful gatherings. As stated previously, the practice of kettling — when police form large cordons and contain a crowd within a limited area, either preventing protesters from leaving or allowing only one exit — is "intrinsically detrimental to the exercise of the right to freedom of peaceful assembly, due to its indiscriminate and disproportionate nature" (A/HRC/23/39/Add.1, para. 37). In that regard, it may be particularly detrimental to individuals with disabilities, especially if those disabilities affect mobility. Societal attitudes that promote a lack of understanding or accommodation for persons with disabilities also constitute a significant barrier to their exercise of the right to freedom of peaceful assembly.

4. Practices that threaten or impede the enjoyment of the right to freedom of peaceful assembly

41. Finally, some groups face a greater risk of discrimination and retribution when exercising their assembly rights due to practices which are not explicitly contained in the law (and which may, in fact, deviate from the law). In Indonesia for example, religious minority groups such as Ahmadis (the Ahmadiyah), Baha'is, Christians and Shias face physical attacks from militant Islamic groups with little intervention from the Government. Despite a Supreme Court ruling upholding the right of the Taman Yasmin Indonesian Christian Church congregation to put up their church building, in Bogor, West Java, local authorities sealed the building in 2010 and, since then, have prevented church members from gaining access to their church.

42. The Special Rapporteur is deeply concerned about the use of police violence, harassment and judicial intimidation against assemblies held by women in many parts of the world. In Cambodia, for example, female land-rights activists have been targeted for violence, harassment and arrest on numerous occasions. In India, in the State of Orissa, 42 women human rights defenders were arrested and detained for peacefully protesting against the building of a dam. In Sri Lanka, women advocating for investigations into the enforced disappearance of their loved ones face considerable opposition from the Government. In Cuba, women defenders promoting and protecting human rights (Damas de Blanco) have repeatedly been targeted by security forces when peacefully demonstrating for the rights of detainees. Similarly, in Zimbabwe, members of a local women's group, Women of Zimbabwe Arise, were beaten and arrested in September 2013 after staging a peaceful demonstration outside Parliament.

43. The Special Rapporteur reminds Member States that the Convention on the Elimination of All Forms of Discrimination against Women guarantees the equality of men and women in the enjoyment of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (art. 1). Cultural notions, family obligations and perceived vulnerability should never be used as grounds on which to deny or limit the right of women to assembly.

44. Moreover, arbitrary differences in the policing of peaceful assemblies are a concern in some Member States. In 2012, for example, the Minister for Ethics and Integrity of Uganda allegedly intervened to disrupt two private civil society workshops: one on the monitoring of human rights violations, and another on the human rights of LGBTI people. Participants say that both workshops were targeted because they addressed the rights of LGBTI people.

45. Surveillance tactics ostensibly designed to prevent criminal activity are also often used selectively to target certain groups who plan to stage peaceful public assemblies. In

Canada, for example, the Government formed a special police unit to produce intelligence updates on potential protests by indigenous peoples, primarily those fighting outside development on their ancestral land. Similarly, disproportionate force (including armed police, snipers and roadblocks) is often deployed at disfavoured protests as an intimidation tactic. Such practices should be vigorously discouraged. As the Special Rapporteur has previously noted, public assemblies should be presumed to be peaceful and lawful, until proven otherwise (A/HRC/20/27, para. 25) Surveillance tactics and disproportionate shows of force attest that authorities in some Member States often presume the opposite, and have a chilling effect on peaceful protestors, such as in the United Kingdom of Great Britain and Northern Ireland (A/HRC/23/39/Add.1, para. 32).

46. In other cases, inaction by authorities may prevent some groups from exercising their right to freedom of peaceful assembly. The Special Rapporteur has received numerous reports from India regarding the disruption of public assemblies of Dalit individuals — members of the country's traditional "untouchable" caste. This includes one case in 2009 in which members of another caste obstructed a funeral procession and beat members of the Dalit community. Police reportedly failed to intervene, despite being present. In Egypt, peaceful female demonstrators were sexually assaulted repeatedly in Tahir Square, largely due to the inaction of law enforcement authorities. In Bosnia and Herzegovina, unidentified individuals violently disrupted LGBTI events in 2008 and 2014. In both cases, the police failed to provide protection to the organizers and participants. In several countries, stigmatization and counter-demonstrations against LGBTI pride parades and marches have also dissuaded organizers from holding such events.

47. Other practices not directly related to the right to freedom of peaceful assembly may also be used as leverage to keep certain groups from freely exercising such right. Those practices include the expulsion of students from universities for participating in peaceful protests (for example, in Chile), the arrest and detention of, and excessive use of force against, peaceful Tibetan students calling for freedom to study the Tibetan language (China), the threat of revocation of residency, refugee or asylum status for participating in peaceful demonstrations, the existence of institutional obstacles that prevent demonstrators from receiving competent legal assistance if charged with an assembly-related crime (including the harassment and intimidation of lawyers who provide such assistance), and the threat of termination of employment (and legal residency status linked to employment in some circumstances) for participating in peaceful protests, for foreigners and migrants.

D. Challenges to the enjoyment of the right to freedom of association by groups most at risk

1. Legislation governing freedom of association that contains explicitly discriminatory provisions

48. Legislation that explicitly excludes individuals or groups from forming associations on the basis of prohibited grounds constitutes a violation of the rights of those groups. For example, migrant workers are explicitly prohibited from forming trade unions in Singapore, and they are not allowed to join or form unions in the Plurinational State of Bolivia (CMW/C/BOL/CO/2, para. 34). In some instances non-nationals are allowed to join existing trade unions or labour associations but are not allowed to hold office in those associations, as in Singapore. However, the restriction on forming their own associations deprives migrants of autonomy and vehicles through which to advocate or promote issues of concern that may differ from those of nationals.

49. Some laws limit the type of associations that individuals or groups can join or form. The Committee on the Rights of the Child has noted with concern that in Costa Rica, the

Children and Adolescents Code denied adolescents the right to form or join political associations, yet they may form community development associations in which they may actively participate (CRC/C/CRI/CO/4, para. 37). In Turkey, children over the age of 15 may form associations and from the age of 12 may join those associations, but they must be 19 in order to form an organizational committee for outdoor meetings (CRC/C/TUR/CO/2-3, para. 38). The justification for explicitly excluding these groups from forming associations that engage in certain activities is unclear.

50. In an example of good practice, the Supreme Court of Estonia found the provisions of the Non-Profit Associations Act that restricted the right to form and lead associations to persons over the age of 18 years old to be in contravention of article 15 of the Convention on the Rights of the Child.

51. The Special Rapporteur is concerned at the increasing incidents of racism and incitement to racism in various regions of the world. He further notes the absence, in several States, of laws prohibiting and criminalizing the formation of associations that promote racism and discrimination as required by article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. This constitutes a serious omission in the protection of the right to freedom of association. The Special Rapporteur emphasizes that this provision is a key protection against organizations that target groups most at risk of discrimination, such as minorities, indigenous peoples and non-citizens. While noting that the involuntary dissolution of associations should be a measure of last resort, he agrees with the European Court of Human Rights that the dissolution of an association that engages in racist activities constitutes a justifiable limitation of the freedom of association.[21] Moreover, the Special Rapporteur endorses the view that the criminalization of the dissemination of racism, xenophobia or ethnic intolerance, and the dissolution of every group, organization, association or party that promotes them, are peremptory norms from which no derogation is allowed.[22]

2. Legal provisions on freedom of association that are stated generally but have a disproportionately negative impact on certain groups

52. Legislation requiring associations to adhere to a State ideology, principles or religion can be used to exclude individuals and groups that do not subscribe to that ideology, principles or religion. In Indonesia for example, the Law on Mass Organizations requires that the objectives of associations do not contradict State principles (Pancasila), thus excluding groups, including minorities, that may not agree with those principles.[23]

53. Registration requirements for associations may have a disproportionate effect on certain groups most at risk, making it harder for them to form associations. For example, minority groups may face difficulties in forming associations that aim to protect and preserve their culture in a State that seeks to suppress ethnic minority identity or interprets minority consciousness as a means for minority groups to undermine territorial integrity. The Special Rapporteur echoes the jurisprudence of the European Court on Human Rights

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[21] Office of the United Nations High Commissioner for Human Rights (OHCHR), "Hungarian extreme-right: UN experts welcome European Court of Human Rights' decision", press release of 26 July 2013. Available from: www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13584&LangID=E.

[22] European Court of Human Rights, *Vona* v. *Hungary*, application No. 35943/10, judgement of 9 July 2013, para. 71 and concurring opinion of Judge Pinto de Albuquerque.

[23] OHCHR "Indonesia: 'Restrictive' bill threatens freedoms of association, expression and religion', warn UN rights experts", press release of 14 February 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12989&LangID=E.

affirming the legitimacy of associations formed to promote issues of concern to minorities for historical and economic reasons.[24]

54. The process of registering an association may prove to be cumbersome for marginalized groups and exclude groups such minorities or persons with disabilities. For example, the language used to communicate could be inaccessible, and physical access to locations for registration could also be a challenge for those groups. Mandatory registration, particularly where authorities have broad discretion to grant or deny registration, provides an opportunity for the State to refuse or delay registration to groups that do not espouse "favourable" views. Associations formed to defend human rights, engage in civic awareness, and to lobby and advocate are susceptible to such delays and denials, as has reportedly been the case in the Sudan.

55. The Special Rapporteur emphasizes that the right to freedom of association applies equally to associations that are not registered (A/HRC/20/27, para. 96). He endorses as best practice a voluntary registration regime that permits unregistered associations to operate. The Special Rapporteur notes with approval the recent ruling by a magistrate's court in Zimbabwe, quashing charges of running an unregistered organization preferred against a member of the Gays and Lesbians of Zimbabwe association.

56. Nevertheless, where a registration regime exists, requirements should be framed such that no one is disadvantaged in the formation of her or his association, either by burdensome procedural requirements or unjustifiable limitations to substantive activities of associations. The State has an obligation to take positive measures to overcome specific challenges that confront marginalized groups, such as indigenous peoples, minorities, persons with disabilities, women and youth, in their efforts to form associations.[25]

57. Funding restrictions, including restrictions on foreign funding, may disproportionately affect associations that promote issues that do not enjoy popularity or the support of the State or the majority of the population, including those that relate to the advancement of the rights of marginalized groups. This is evidenced by the dichotomy that some States impose regarding association funding sources: certain types of activities or organizations are permitted to receive foreign funding while others only receive domestic funding. For instance, to be considered an Ethiopian charity or society, organizations cannot receive more than 10 per cent of their funding from foreign sources. Only Ethiopian charities or societies may engage in promoting human rights work, gender equality and religious equality, the rights of persons with disabilities, children's rights, conflict resolution or reconciliation and the efficiency of the justice and law enforcement services. Foreign associations or those that receive more than 10 per cent of their funding from foreign sources may not engage in such activities. In the Russian Federation, an organization working on "political activities" and receiving foreign funding must register itself as a "foreign agent", which in Russian is synonymous with "foreign spy". The law broadly defines political activities as attempts to influence official decision-making or to shape public opinion to exert a similar influence, and thus can include work in areas such as human rights, governance and accountability issues.

58. Legislation that provides broad discretion to authorities to monitor or oversee the activities of associations poses a grave risk to the continued existence of organizations that engage in activities perceived to be threatening to the State. Groups that advocate against the unsustainable use of natural resources or the use of those resources contrary to the rights of indigenous peoples are often targeted and risk closure, as happened to Fundación

[24] European Court of Human Rights, *Sidiropoulos and others* v. *Greece*, case No. 57/1997/841/1047, 10 July 1998, paras. 44 and 46.

[25] Human Rights Committee, general comment No. 25 (1996), para. 12.

Pachamama in Ecuador pursuant to Presidential Decree No. 16. The Special Rapporteur emphasizes that associations are entitled to operational autonomy, which includes the freedom to choose which activities they engage in to achieve organizational goals.

3. Other legal provisions that have a disproportionate impact on the right to freedom of association of some groups

59. The use of national security or counter-terrorism legislation to restrict or prohibit the formation or registration of associations is often detrimental to the right to freedom of association of minority groups. Under the guise of fighting terrorism or extremism, associations comprised of minorities, including religious, linguistic or ethnic minorities, may be subjected to delays in registration, denial of registration, harassment and interference. Such associations may be seen as promoting or propagating views or beliefs not shared by the majority of the population or that are unfavourable to the authorities. The Special Rapporteur recognizes that States have a legitimate obligation to protect their national security and public safety. However, this legitimate interest should never be used as an excuse to silence critical or diverse voices. States must treat all associations equitably, regardless of their views, and this treatment must be guided by objective criteria that comply with international human rights law, where a registration regime exists. In Chile, members of the Mapuche indigenous community have been targeted under counter-terrorism legislation when advocating for the rights of their community. In Turkey, peaceful Kurdish activists advocating for the rights of their community have been arrested and sentenced to prison for allegedly belonging to an association considered to be a terrorist group.

60. Criminal procedure laws and penal sanctions are used in several States to deter the exercise of the right to freedom of association. Authorities who are hostile to critical voices resort to criminal prosecution for defamation or similar offences, thereby discouraging and interfering with legitimate activities by groups. Organizations engaged in human rights work, anti-corruption advocacy and other accountability initiatives are particularly targeted. In Oman, between May and June 2012, 11 human rights defenders, including bloggers, writers, and members of human rights organizations and of the media, were sentenced for offences related to injurious speech and assembly. They were all pardoned on 22 March 2013. In Viet Nam, in March 2013, the police charged a human rights defender with slander against the regime. The authorities asserted that he had not expressed his opinions in a peaceful manner and that he had thus disturbed the public order. The country's Press Law of 1989 limits the right to express dissent, restricting it to "constructive" opinions on implementing the lines and policies of the Communist Party and the laws of the States law. In El Salvador, article 345 of the Criminal Code considers as illegal two or more people gathering to commit a crime. Despite the necessity to prove intent to commit a crime, law enforcement officials often stop and detain young people simply because it is believed that they are gathering to organize or plan a crime, or that they belong to a gang merely because they have a tattoo, are young, live in a particular neighbourhood where there is gang presence or are poor. Youth are additionally disproportionately affected because criminal groups force them to join their ranks, thereby violating their right to freedom of association.

61. The right to freedom of association extends to cross-border or international collaboration between associations and their membership. Indeed, the United Nations Declaration on the Rights of Indigenous Peoples acknowledges the right of indigenous peoples divided by international borders to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders (art. 36).[26] That

[26] See also the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, art. 2, para. 5.

right can, however, be in tension with laws regulating cross-border activities such as immigration and trade. For example, pastoralist communities whose territories or means of livelihood straddle international borders often do not use formal border crossing points or possess the necessary administrative documentation such as passports. The Special Rapporteur is unconvinced that border control laws should automatically trump their ability to maintain their cultural lifestyles. He believes that States have an obligation to facilitate the free movement of such communities, including by adopting special measures recognizing cross-border movements in the context of transhumance.

62. The Special Rapporteur further decries the discriminative and disproportionate use of immigration laws by States to deny residence or work permits to staff of associations that are critical of the Government or that express views that are unpopular with the Government.

63. As stated by the Human Rights Council, in its resolution 24/5, the right to freedom of association applies both online and offline. As such, laws that unjustifiably restrict freedom of expression on the Internet and limit the ability of people to associate over that medium are unacceptable. With youth being the most active social media users overall, restrictions placed on access to social media sites will disproportionately affect their ability to organize and mobilize for their common interests. The perception that youth in general lacks maturity and are therefore incapable of participating fully in public affairs often forms the backdrop against which some Governments feel the need to filter and dictate media content made available in their countries.

64. In addition to legislation that restricts the right to the freedom of assembly of LGBTI people through discriminatory law that prohibits "propaganda" or the "promotion" of homosexuality, some legislation also specifically prohibits the formation, running, participation in or support of organizations that advocate for the protection of the human rights of LGBTI people. This is the case of the above-mentioned Same Sex Marriage (Prohibition) Act in Nigeria. The Special Rapporteur highlights that the Human Rights Committee has clarified that any limitations to rights protected by the International Covenant on Civil and Political Rights, when permitted by the Covenant, may not be imposed for discriminatory purposes or applied in a discriminatory manner. Therefore, provisions restricting or prohibiting the right to freedom of association of a specific group on discriminatory grounds, such as sexual orientation or gender identity, is not permitted under the Covenant and must be reviewed with a view to repeal.

4. Practices threatening and impeding the enjoyment of the right to freedom of association

65. The lived experiences of members of groups most at risk may be problematic even where legislation promotes equality and non-discrimination, due to practices that threaten and impede the enjoyment of the right to freedom of association. Such practices can lead to the marginalization of groups already disadvantaged in their exercise of the right to freedom of association. The conditions of work for migrant domestic workers, for example, are often characterized by isolation and dependence. This is reinforced by unfamiliarity with the work environment of the host country and a lack of basic support structures, which then encourage bad practices by employers, such as restricting the freedom to leave the workplace. Women migrant workers face gender-based violence and abuse, and migrant domestic workers in irregular situations are further at risk of deportation. They are therefore even less likely to speak out against exploitation and abuse. In these circumstances, migrant workers are faced with considerable obstacles in their efforts to form associations that cater for their interests. Refugees and asylum seekers find themselves in a similar situation where the fear of their status being revoked has a chilling effect on their ability to mobilize.

66. Patriarchal attitudes and stereotypes in societies that promote a narrow understanding of the role of women as being confined to the private sphere militate against the ability of women to organize and participate in activities in the public sphere. Thus, the Committee on the Elimination of Discrimination against Women has expressed concern at the harassment, intimidation and imprisonment of members of women's NGOs and women human rights defenders and at restrictions placed on the activities of organizations focused on gender equality (see, for example, CEDAW/C/UZB/CO/4, paras. 17–18). Similarly, the Working Group on the issue of discrimination against women in law and in practice found that women's participation in political and public life is commonly constrained by structural and societal discrimination in the family, in caregiving responsibilities and in violence against women, and by marginalization by political parties and other non-State public institutions. The obligation of States to remove those barriers is clearly mandated in article 2 (f) of the Convention on the Elimination of All Forms of Discrimination against Women and has been repeatedly advocated by the Committee on the Elimination of Discrimination against Women (A/HRC/23/50, para. 56). Despite laws prohibiting caste discrimination and positive measures to reverse the impact of discrimination and violence, the Dalit population in India continues to face severe social restrictions in participating on an equal footing with others in political parties and associations.

67. Some groups are denied registration or the renewal of their existing registration, in contravention of laws that outline the procedures to be followed in registering associations. This is allegedly the case in Viet Nam, where a majority of Hmong Christian house churches have been denied registration and are therefore unable to operate. The authorities do not consider them to be a "true" religion and instead characterize them as carrying out anti-Government activities. The Special Rapporteur aligns himself with the sentiments of the Special Rapporteur on freedom of religion or belief "that freedom of religion or belief is not limited to members of registered religious communities and that registration may only be appropriate for the acquisition of a legal personality and related benefits" (A/64/159, para. 13). He emphasizes that it is the duty of the State to ensure that everyone can peacefully express their views without fear.

68. The Special Rapporteur believes that the right to freedom of association should be available for everyone to exercise. This includes the freedom of Governments to form government-organized NGOs or for organizations to closely align with Government. However, he deplores the practice of restricting the formation of autonomous associations so that civic space is monopolized by government-organized NGOs. Civic space should be an environment in which diverse organizations are allowed to operate, compete and cooperate without interference or control by authorities. Where the space of operation by autonomous associations is limited, marginalized groups are all the more constrained in how they establish and operate associations.

69. In its draft general comment on article 12, the Committee on the Rights of Persons with Disabilities states that the recognition of equal legal capacity for persons with disabilities is a key principle that is inextricably linked to the enjoyment of other rights, including the freedom of association and the right to participate in political and public life (CRPD/C/11/4, paras. 44–45). Legal capacity is distinguished from mental capacity, with the former referring to the ability to hold rights and duties and the ability to exercise those rights and duties (ibid., para. 12). The paradigm shift in perceptions of the legal capacity and equality before the law for persons with disabilities, brought about by the Committee on the Rights of Persons with Disabilities, has not yet become entrenched in practice. The shift from substitute decision-making to supported decision-making has profound implications on how and with whom persons with disabilities associate.

70. The Special Rapporteur recognizes the severe impact that the diagnosis of disability can have on the right to freedom of association. Too often, persons with disabilities are

deprived of their autonomy to exercise their voting rights and to choose who to marry, where to live and how to relate to others in the community because of perceived or actual deficiencies in mental capacity and decision-making ability. Persons suffering from cognitive or psychosocial disabilities, and often children and young persons with these disabilities, are most at risk of being deprived of their legal capacity and equal treatment under the law. The Special Rapporteur urges States to take measures to ensure that no one is at any time deprived of their legal capacity due to their disability. Instead, support should be provided to enhance their capacity to exercise the rights and duties that they hold as human beings.

IV. Conclusions and recommendations

71. **The Special Rapporteur emphasizes that the rights to freedom of peaceful assembly and of association are due to everyone without distinction, within the territories of States and subject to their jurisdiction, and may not be limited on any of the prohibited grounds that the Human Rights Committee has indicated are covered by article 2 of the International Covenant on Civil and Political Rights. Freedom from discrimination is also due to those who advocate and lobby on behalf of groups most at risk.**

72. **The rights to freedom of peaceful assembly and of association play a key role in empowering individuals belonging to groups most at risk to claim other rights and overcome the challenges associated with marginalization. Such rights must therefore not only be protected, but also facilitated. It is the responsibility of all stakeholders to ensure that the voices of individuals belonging to groups most at risk are heard, and taken into account, in compliance with the principles of pluralism of views, tolerance, broadmindedness and equity.**

73. **In that regard, the Special Rapporteur calls upon States to:**

(a) Ratify all relevant international human rights instruments that protect the rights of individuals belonging to groups most at risk;

(b) Take all necessary measures to ensure that discrimination on prohibited grounds is eliminated, including in legislation or in practice, whether perpetrated by the State or by non-State actors;

(c) Take positive measures, including affirmative action measures, to ensure that all individuals belonging to groups most at risk have the ability to exercise effectively their rights, including to freedom of peaceful assembly and of association;

(d) Refrain from supporting limitations imposed by private parties on the rights to freedom of peaceful assembly and of association, particularly those that disproportionately affect groups most at risk. A private contractual provision in which a contracting party waives the rights to freedom of peaceful assembly and of association should be considered invalid and unenforceable as an infringement upon a fundamental right.

74. **In relation to recommendations pertaining to the exercise of the rights to freedom of peaceful assembly and of association, the Special Rapporteur reiterates all the recommendations contained in his previous thematic reports.[27] They are all the more relevant for individuals belonging to groups most at risk whose rights are more likely to be violated or unduly restricted. In particular, he calls upon States to:**

[27] A/HRC/20/27 (paras. 84–100), A/HRC/23/39 (paras. 81–83) and A/68/299 (paras. 58–64).

(a) Ensure that no individual belonging to a group most at risk is criminalized for exercising his/her rights to freedom of peaceful assembly and of association, nor is subject to threats or use of violence, harassment, persecution, intimidation or reprisals;

(b) Ensure that any restrictions on the rights of individuals belonging to groups most at risk to freedom of peaceful assembly and of association are prescribed by law, necessary in a democratic society and proportional to the aim pursued, and do not harm the principles of pluralism, tolerance and broadmindedness. Any restrictions should be subject to an independent, impartial and prompt judicial review;

(c) Ensure that no derogation is made from the rights to life and to be free from torture and other cruel, inhuman or degrading treatment or punishment of individuals belonging to groups most at risk;

(d) Provide individuals belonging to groups most at risk exercising their rights to freedom of peaceful assembly and of association with the protection offered by the right to freedom of expression;

(e) Ensure that administrative and law enforcement officials are adequately trained in relation to the respect of the rights of individuals belonging to groups most at risk to freedom of peaceful assembly and of association, in particular in relation to their specific protection needs;

(f) Ensure that law enforcement authorities who violate the rights of individuals belonging to groups at risk to freedom of peaceful assembly and of association are held personally and fully accountable for such violations by an independent and democratic oversight body and by the courts of law;

(g) Ensure that individuals belonging to groups most at risk who are victims of violations and abuse of their rights to freedom of peaceful assembly and of association have the right to a timely and effective remedy and obtain redress.

75. The Special Rapporteur calls upon national human rights institutions complying with the Paris Principles to play a key role in monitoring and publicly reporting on the fulfilment by the States of the above-mentioned recommendations.

76. The Special Rapporteur again encourages the Human Rights Committee to consider adopting general comments on articles 21 and 22 of the International Covenant on Civil and Political Rights, with a particular focus on the related challenges faced by individuals belonging to groups most at risk.

77. The Special Rapporteur calls upon the General Assembly and the Human Rights Council to address thoroughly human rights violations and abuse suffered by individuals belonging to groups most at risk when exercising or seeking to exercise their rights to freedom of peaceful assembly and of association.

78. The Special Rapporteur calls upon the diplomatic community and other relevant stakeholders to publicly denounce violations and abuses committed against those individuals belonging to groups most at risk exercising or seeking to exercise their rights to freedom of peaceful assembly and of association, and to provide support to those victims.